IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06-01-2005

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE A.K. RAJAN

WRIT APPEAL No.3983 OF 2004
and
WAMP.NOs.7485 & 7486 OF 2004

R. Kaaruppan
No.21, 2nd Street,
Balaji Nagar,
Royapettah,
Chennai 600 014. .. Appellant/Petitioner

Vs.

1. Dhanapalraj
   Chairman,
   Bar Council of Tamil Nadu,
   Chennai 104.

2. The Bar Council of Tamilnadu,
   rep. by its Secretary,
   Chennai 600 104. .. Respondents /Respondents

Appeal filed under Clause 15 of the Letters Patent against the order passed by Justice D. Murugesan in W.P.M.P.No.37436 of 2004 in W.P.No.30901 of 2004 dated 18.11.2004.

For Appellant : Mr.R. Kaaruppan
Party-in-person

For Respondents : Mr.K. Venkatakrishnan

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J U D G M E N T

P.K. MISRA, J.

Appellant, an Advocate normally practising in the High Court of Madras, has filed the present appeal against the order passed by the learned single Judge in W.P.M.P.No.37436 of 2004 in W.P.No.30901 of 2004.

2. The aforesaid writ petition has been filed by the appellant calling in question the order dated 11.10.2004 issued by the Bar Council of Tamil Nadu, the present Respondent No.2, whereunder the Bar Council prohibited the Appellant from appearing in any Court until he was purged of the act of contempt. The appellant was further directed to surrender the original Enrolment Certificate along with the Identity Card. The writ petition filed by the appellant is still pending for decision on merit. Along with the writ petition, the appellant also filed WPMP.No.37436 of 2004 praying for stay of the operation of the order passed by the Bar Council dated 11.10.2004. The aforesaid Miscellaneous Petition was considered by the learned single Judge and by order dated 18.11.2004, the learned single Judge passed an order of stay of the part of the impugned order, where under the Bar Council had directed the appellant to surrender his original Enrolment Certificate and his Identity Card. The appellant has however filed the present appeal contending that the operation of the order of the Bar Council in its entirety should have been stayed.

3. The Appellant in person submitted that since in the appeal filed by him, the Supreme Court has granted bail to the appellant, it must be taken that the order of the High Court punishing the appellant for contempt is deemed to have been suspended.

4. Section 19 of the Contempt of Courts Act,1971 provides for appeal from any order or decision of High Court in exercise of its jurisdiction to punish for contempt. Section 19 (2) relates to power of the Appellate Court and it is extracted here under :-

> "19(2) Pending any appeal, the appellate Court may order that -
>
> (a) the execution of the punishment or order appealed against be suspended;

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(b) if the appellant is in confinement, he be released on bail; and

(c) the appeal be heard notwithstanding that the appellant has not purged his contempt."

5. Section 19(2) empowers the Appellate Court to suspend the execution of the punishment as well as to suspend the order appealed against. Under Section 19(2)(b), the Appellate Court is also entitled to release the appellant on bail, if he is in confinement. Punishment can be fine or imprisonment or both. In case the Appellate Court suspends the execution of the punishment, the person convicted for contempt is not required to undergo punishment for the time being. In other words, he need not pay the fine or need not undergo the sentence of imprisonment. Where, however, such convicted person moves the Appellate Court, if he is in confinement, he can be released on bail by exercising power under Section 19(2)(b). However, the suspension of the execution of the punishment under Section 19(2)(a) or grant of bail under Section 19(2)(b) ipso facto does not have the effect of suspending the "order appealed against". In other words, it does not have the effect of staying the operation of the impugned order under which a person has been found guilty of contempt. Where the "order appealed against" is suspended, there would be no order of conviction for the time being till the appeal is decided. Where, only the "execution of the punishment" is suspended or the person is released on bail, such order does not amount to staying the operation of the entire order appealed against. The effect is that the person need not serve the sentence for the time being. There is fine distinction between the two powers.

6. The appellant also submitted that since an appeal was pending, the order of conviction was yet to become final, and therefore, till the appeal is decided on merit, Rule 14 of the Madras High Court Rules under the Advocates Act cannot be enforced. In our opinion, the aforesaid submission is not acceptable. Law is well settled that mere filing of appeal does not operate as stay of the order appealed against, unless there is a specific provision of law to that effect. On the other hand, the very fact that a provision has been made for staying the operation of the impugned order, in Section 19(2) of the Contempt of Courts Act, clearly indicates that mere filing of an appeal would not operate as stay of the order appealed against.

7. The appellant has further submitted that at any rate the High Court having not chosen to take action, it was not for the Bar Council to take such action and therefore, the impugned order so far as the Bar Council is concerned, was uncalled for.

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8. This aspect has been considered by the learned single Judge, who has opined that Rule 14 of the Madras High Court Rules, framed by the High Court under Section 34 of the Advocates Act, 1961, would operate automatically and it is not necessary to pass a formal order by any authority. We do not think there is any scope for taking a different view on this aspect. As a matter of fact, as rightly pointed out by the learned single Judge, the decisions of the Supreme Court reported in (2001) 8 SCC 650 (PRAVIN C. SHAH v. K.A. MOHD. ALI AND ANOTHER) and (2004) 6 SCC 311 (BAR COUNCIL OF INDIA v. HIGH COURT OF KERALA) are clear on this aspect.

9. The appellant has rather passionately submitted that disposal of the appeal before the Appellate Court may take a long time and prohibiting the appellant from practising in any court of law for an uncertain or indefinite period would not be in the interest of justice. Unfortunately for the appellant, this is a piquant situation, but this will not come to the aid of the appellant, as by very operation of the Rules the right of the Advocate convicted for Contempt of Court becomes affected. It is for the appellant to move the Appellate Court for expeditious disposal of the appeal.

10. For the aforesaid reasons, we do not see any scope for interference with the discretionary order passed by the learned single Judge while considering the question of stay. The appeal is therefore liable to be rejected. However, it would be open to the appellant to move the learned single Judge for early disposal of the writ petition. There would be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/

Asst.Registrar

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Sub Asst.Registrar

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To

1. The Chairman,
   Bar Council of Tamil Nadu,
   Chennai 104.

2. The Secretary,
   Bar Council of Tamil Nadu,
   Chennai 600 104.

1 cc to Mr. K. Venkatakrishnan, Advocate, SR. 1097
1 cc to Mr. R. Karuppan, Advocate, SR. 1101

W.A.NO.3983 of 2004

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